FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JAN - 5 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Laidlaw International, Inc.
ATTN: Ivan R. Cairns, Vice President and General Counsel
55 Shuman Boulevard, Suite 400
Naperville, IL 60563

RE: MUR 5375
Laidlaw International, Inc., formerly Laidlaw Inc.
Laidlaw Transit, Inc.
American Medical Response, Inc.

Dear Mr. Cairns:

On July 15, 2003, the Federal Election Commission notified Laidlaw International, Inc, formerly Laidlaw Inc. ("Laidlaw"), Laidlaw Transit, Inc. ("Laidlaw Transit"), and American Medical Response, Inc. ("AMR") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to each of these entities at that time.

Upon further review of the allegations contained in the complaint, and upon information provided by you in response to the complaint, the Commission, on December 9, 2003, found that there is reason to believe Laidlaw, Laidlaw Transit, and AMR violated 2 U.S.C. §§ 441b and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Answer Questions addressed to each named Laidlaw entity must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondents.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Julie McConnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Bradley A. Smith
Chairman

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Laidlaw International, Inc., formerly Laidlaw Inc. Laidlaw Transit, Inc. American Medical Response, Inc. MUR: 5375

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Gordon Bergelson, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Laidlaw Inc. in connection with certain activities allegedly involving corporate reimbursement of campaign contributions. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Laidlaw Corporate Structure

Laidlaw International, Inc., the successor to Laidlaw Inc. (collectively, "Laidlaw"), is a Delaware corporation headquartered in Naperville, Illinois. Laidlaw is the indirect parent of Laidlaw Transit, Inc. ("Laidlaw Transit") and AMR, the largest provider of healthcare transportation services in the United States. Prior to 2002, AMR was a direct subsidiary of Laidlaw Transit.

Laidlaw and five of its subsidiaries declared Chapter 11 bankruptcy on June 28, 2001. The bankruptcy filing did not name Laidlaw's operating units, including AMR, and the reorganization did not affect these companies. *See Laidlaw Reorganization FAQ's, at* http://www.laidlaw.com/reorg/faq.html (last visited Oct. 3, 2003) ("[AMR is] not included in the filings and therefore [is] not affected by the Company's actions."). The U.S. Bankruptcy Court for the Western District of New York confirmed Laidlaw's reorganization plan on February 28, 2003, and Laidlaw formally emerged from bankruptcy on June 23, 2003. As a result of the reorganization, Laidlaw Inc. changed its name to Laidlaw International, Inc. and moved its headquarters to the United States from Canada.

B. Factual Summary

Generally, the complaint alleges that Laidlaw funnels campaign contributions through its employees and officers, reimbursing them through bonus payments and other compensation that the Complainant terms "slush funds." The complaint specifically asserts that AMR reimbursed employee contributions through bonus payments from a "supplemental compensation plan" between 1995 and 2001, and cites a U.S. News & World Report article that details the results of an internal audit report concerning the alleged AMR reimbursements. *See* Compl. Ex. 1 (Megan Barnett, *Meet Mr. Fixit*, U.S. NEWS & WORLD REPORT, May 5, 2003) ("U.S. News Article").

According to this article, Martha Hesse, a Laidlaw Board member, discovered that AMR apparently had been reimbursing some employees who had made federal campaign contributions. Laidlaw's law firm, Jones, Day, Reavis & Pogue ("Jones Day"), investigated AMR's campaign finance activities and presented its findings in a report. Examining $75,000 in contributions made by AMR employees between 1995 and 2001, the internal investigation reportedly found that some AMR employees who contributed to federal campaigns received "bonus" payments from a "supplemental compensation plan." The article quotes the internal investigation report as stating that, although the employees denied that their donations were linked to AMR's compensation plan, "there is a risk that a prosecutor would conclude that [plan] funds are used for illegal purposes." Compl. Ex. 1, at 2-3.

The article indicates Jones Day advised the Laidlaw Board not to inform the Commission of the report's findings, stating that "the potential harm to the corporation resulting from voluntary disclosure significantly outweighs the perceived benefits associated with governmental disclosure." As reported in U.S. News, the minutes of a December 17, 2001, meeting indicated that Ms. Hesse strenuously objected to the recommendation, but the other directors affirmed Jones Day's approach.

Although the U.S. News Article does not indicate the candidates or committees who received contributions allegedly reimbursed by AMR, a review of the Commission's public records reveals that AMR employees made numerous contributions during the period in which the alleged reimbursement scheme was in effect. The following chart sets forth contributions made by AMR employees between 1992, when AMR was founded, and the election cycle in which the company allegedly stopped making reimbursements through its supplemental compensation plan:

Election Cycle	Largest Single Recipient	Amount to Recipient	Total Contributions	Total Amount
1991-1992	---	$0.00	2	$750.00
1993-1994	Kennedy for Senate	$3,000.00	13	$10,000.00
1995-1996	AMBU-PAC	$6,500 00	42	$34,050.00
1997-1998	AMBU-PAC	$13,800.00	61	$37,250.00
1999-2000	AMBU-PAC	$12,925.00	54	$23,075.00
2001-2002	AMBU-PAC	$6,250.00	57	$27,150.00

Approximately $22,500 of the contributions for the 2001-2002 election cycle were made in 2001, versus $4,650 in 2002. Also, during the years in which AMR's alleged reimbursement scheme was in place, AMR employees contributed a total of $39,475 to the American Ambulance Association Federal PAC ("AMBU-PAC"). No AMR employees made contributions to AMBU-PAC prior to 1995 or after 2001.

Laidlaw filed its response on August 1, 2003, on behalf of itself and its subsidiaries. Its response does not address the substantive allegations of the complaint. Rather, Laidlaw claims that its Chapter 11 reorganization limits any Commission investigation relating to actions committed prior to bankruptcy. Laidlaw Resp. at 1-2. Laidlaw also challenges the materiality of the U.S. News Article, arguing that the "reason to believe" standard cannot be met by reliance upon information that does not constitute material evidence. *Id.* at 3-4.

C. Legal Analysis

1. Bankruptcy Reorganization as Bar to Enforcement

As a threshold issue, Laidlaw argues its bankruptcy filing and subsequent reorganization bars the Commission from investigating alleged campaign finance violations that occurred prior to June 28, 2001. Citing 11 U.S.C. § 1141, Laidlaw claims that the alleged violations constitute "pre-petition claims" that have been discharged by Laidlaw's exit from bankruptcy. *See* Laidlaw Resp. at 1-2. As discussed below, this argument is without merit.

Section 1141 generally discharges liability for debts that arose prior to confirmation of the debtor's reorganization plan, rendering the property of the debtor free and clear of all claims and interests of creditors.[1] This section identifies six types of parties bound by the terms of a confirmed reorganization plan: (1) the debtor; (2) entities issuing securities under the plan; (3) entities acquiring property under the plan; (4) creditors; (5) equity holders; and (6) general partners in the debtor. *See* 11 U.S.C. § 1141(a); *In re Union Golf of Florida, Inc.*, 242 B.R. 51, 56 (Bankr. M.D. Fla. 1998). Confirmation of a Chapter 11 plan thus operates as a "clean bill of health" with respect to the categories of potential claimants named in § 1141(a). *See In re Food City, Inc.*, 110 B.R. 808, 813 (Bankr. W.D. Tex. 1990).

Confirmation of a reorganization plan, however, does not insulate a debtor from post-confirmation enforcement actions. *See Food City*, 110 B.R. at 810 n.2, 812-13. The action of a

1 The bankruptcy code defines a pre-petition claim as a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,

governmental unit to enforce its police or regulatory power does not represent a "claim" against the debtor, so that the governmental unit is not a "creditor" within the meaning of section 1141, and the action is not barred by an order confirming a chapter 11 plan.[2] *See Union Golf*, 242 B.R. at 58-61 (holding that a debtor's confirmation plan was not binding on the county zoning authority, thus permitting a zoning action instituted against the debtor for violations of Florida law to proceed); *Food City*, 110 B.R. at 813 (declining to amend a reorganization plan that violated federal securities laws on the basis that the SEC could prosecute the violations in a post-confirmation enforcement action).

Any investigation of alleged violations or enforcement action against Laidlaw constitutes a valid exercise of the Commission's regulatory power, and thus is not barred by Laidlaw's bankruptcy reorganization.

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secured or unsecured. *See* 11 U.S.C. § 101(5)(A); *In re Hexcel Corp. v. Stepan Co.*, 239 B.R. 564, 566 (N.D. Cal. 1999).

2 11 U.S.C. § 362(b)(4) exempts actions by a governmental unit to enforce its "police or regulatory power" from the automatic stay of judicial and administrative proceedings effected by the filing of a bankruptcy petition. The definition of "police or regulatory power" set forth in § 362(b)(4) applies to post-confirmation actions by governmental units under § 1141. *See Union Golf*, 242 B.R. at 58 (*citing In re Cournoyer v. Town of Lincoln*, 790 F.2d 971, 977 (1st Cir. 1986)). Under this definition, a government action constitutes an exercise of "police or regulatory power" if it aims to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar regulatory laws – or to fix damages for violation of such laws – rather than to enforce the government's pecuniary interest in the debtor's property. *See Securities and Exchange Comm'n v. Towers Fin. Corp.*, 205 B.R. 27, 31 (Bankr. S.D.N.Y. 1999) (citing S. Rep. No. 95-989, at 52 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838) (holding that a Securities and Exchange Commission action seeking injunctive relief and disgorgement constituted an exercise of "police power" because it sought to effectuate public policy); *see also In re Deborah Dolen*, 265 B.R. 471, 481 (Bankr. M.D. Fla. 2001) (holding that a Federal Trade Commission action to investigate and prosecute a consumer fraud action against a debtor, and to determine and fix restitution damages for any violation of law, constituted an exercise of police or regulatory power and could proceed pursuant to § 362(b)(4) despite ongoing bankruptcy proceedings); *Commodity Futures Trading Comm'n v. AVCO Fin. Corp.*, 979 F. Supp. 232, 235 (S.D.N.Y. 1997) (holding that an action against a debtor alleging fraud and failure to register as a commodity trading advisor in violation of the Commodity Exchange Act, and seeking injunctive relief, disgorgement, restitution and civil penalties for such violations, constituted an exercise of governmental police power under § 362(b)(4)); *United States v. Oil Transport Co., Inc.*, 192 B.R. 834, 836 (E.D. La. 1994) (exempting from automatic stay under § 362(b)(4) an action by the U.S. government seeking monetary damages for violations of the Oil Pollution Act).

The bankruptcy code therefore does not bar investigation of the alleged violations or enforcement against Laidlaw.[3]

2. Sufficiency of Complaint

Laidlaw also challenges the sufficiency of the instant complaint. Specifically, Laidlaw argues that a complaint enclosing a news article and unrelated documents is insufficient to commence any investigation under the Act. Laidlaw further contends that the reason to believe standard cannot be met by reliance on information that does not constitute material evidence. Laidlaw Resp. at 3-4. As discussed below, this challenge is unavailing.

The complaint in the instant case complied with the Act's requirements for legal sufficiency, and the revised submission was technically sufficient. *See supra*, n.2. Complaints are routinely filed with the Commission and matters are opened based on press reports. *See Federal Election Commission Directive No. 6*, at 4; *see also* Statement of Reasons in MUR 4960 (Hillary Clinton for U.S. Senate Exploratory Comm.), at 1 ("Complaints not based on personal knowledge should identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented."). Commencing an investigation of Laidlaw based on the information in the U.S. News Article thus does not represent a departure from standard Commission practice.

Laidlaw cites *Democratic Senatorial Campaign Comm. v. Federal Election Comm'n*, 745 F. Supp. 742, 745-46 (D.D.C. 1996) ("*DSCC*"), to support its challenge to the sufficiency of the complaint. In that case, the Democratic Senatorial Campaign Committee brought suit against the Commission, arguing that the Commission's dismissal of a complaint against two political

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[3] Laidlaw did not include AMR in its bankruptcy petition, presumably rendering invalid Laidlaw's claim that its reorganization bars investigation and enforcement of AMR's alleged violations under § 1141. *See Laidlaw*

committees was contrary to law and requesting that the court order the Commission to commence an investigation. The court held that the Commission's determination that there was no reason to believe a violation of the Act had occurred was reasonable based on the totality of the circumstances, stating that the Commission had applied a minimum evidentiary standard that required "at least some legally significant facts." *Id.* Recognizing that the "factual record may be sparse at the complaint stage," the court cited with approval the evidentiary standard applied by the Commission:

> [At this stage in the proceedings] complaints certainly do not have to *prove* violations occurred, rendering investigation unnecessary, but the alleged facts must present something that is, in the broad sense, "incriminating" and not satisfactorily answered by respondents.

Id. at 746 (*citing* Supporting Memorandum of Commissioner Josefiak for the Statement of Reasons in MUR 2766, at 4).

Rather than support Laidlaw's challenge to the sufficiency of the instant complaint, the evidentiary standard applied in *DSCC* suggests that, absent a satisfactory answer by the Respondents, the article attached by the Complainant can provide a valid basis for a reason to believe determination. As discussed below in the analysis of the substantive violations in this case, the U.S. News Article presents incriminating details regarding possible campaign finance violations by AMR and the subsequent decision by Laidlaw to conceal these facts from the Commission. Laidlaw's failure to answer the allegations in a definitive fashion – indeed, the failure to contradict them at all – makes it appropriate to conduct an investigation. *DSCC* does not point to a different conclusion.

Reorganization FAQ's, *at* http://www.laidlaw.com/reorg/faq.html (last visited Oct. 3, 2003) ("[AMR is] not included in the filings and therefore [is] not affected by the Company's actions ").

Laidlaw also cites *Federal Election Comm'n v. GOPAC, Inc.*, 917 F. Supp. 851, 854 (D.D.C. 1996) ("*GOPAC*"), to support its argument that the Commission may not rely upon a news article to find "reason to believe" a violation of the Act has occurred.

Relevant to the instant issue is the Commission's claim at oral argument that GOPAC served as a forum for federal candidates to appear and solicit contributions, in itself constituting a contribution. *Id.* at 864. According to the court, the Commission proffered no evidence that would sustain this particular charge, but merely cited a magazine article asserting that GOPAC served as a fundraising mechanism for congressional candidates during the 1990 election cycle, a statement contradicted by accounts of GOPAC meetings attended by national leaders and members of Congress. *See id.* (*citing* Connie Bruck, *The Politics of Perception*, NEW YORKER, Oct. 9, 1995, at 61). The court broadly stated that a "magazine article is not significantly probative, nor is it material evidence on which [a trier of fact] could reasonably find that GOPAC served as a fundraising mechanism for federal candidates," and granted GOPAC's motion for summary judgment. *Id.* (internal quotations omitted).

GOPAC is distinguishable from the case at hand in two important respects. First, that case involved a motion for summary judgment filed after extensive discovery and subject to a standard more stringent than that governing the "reason to believe" determination in the instant case. In a motion for summary judgment, the court must grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case on which the party will bear the burden of proof at trial. *Id.* at 862-63. Indeed, the non-moving party must make this showing through affidavits based on personal knowledge, depositions, answers to interrogatories, and admissions on file, but not through "the mere pleadings themselves." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). This stands in stark contrast to the "reason to believe" standard, under which the Commission may find reason to believe a violation of the Act has occurred if a complaint sets forth sufficient specific facts that would constitute a violation of the Act if proven, or if a complaint not based on personal knowledge identifies a source of information that reasonably gives rise to a belief in the truth of the allegations presented. *See* Statement of Reasons in MUR 4960 (Hillary Clinton for U.S. Senate Exploratory Comm.), at 1.

Second, the magazine article in *GOPAC* contained only a single conclusory statement pertaining to the issue for which it was proffered as support. Even after extensive discovery, no additional evidence supported the Commission's allegation that GOPAC served as a forum for federal candidates to solicit contributions, a statement that was contradicted by other evidence in the record. *GOPAC*, 917 F. Supp. at 864. By contrast, the U.S. News Article submitted with the complaint contains numerous details relating to Laidlaw's alleged violations of the Act, describing with specificity the content of Laidlaw's audit report examining campaign contributions made by AMR employees and the minutes of the Board meeting at which a majority of Laidlaw directors decided to conceal the report. *See* Compl. Ex. 1, at 2-3.

Neither case cited by Laidlaw supports its assertion that the complaint is legally insufficient and unable to sustain a reason to believe finding because it references a news article. As the complaint in the instant case meets the technical requirements for legal sufficiency, Laidlaw's threshold challenge fails.

3. Violations of the Act

There is reason to believe that Laidlaw, Laidlaw Transit, and AMR knowingly and willfully violated 2 U.S.C. §§ 441b and 441f by using bonus payments to reimburse political contributions made by AMR employees.

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with a federal election. 2 U.S.C. § 441b(a). Section 441b(a) also makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive corporate contributions. In addition, this section prohibits any officer or any director of any corporation from consenting to any such contribution or expenditure by the corporation. *Id.*

The Act also provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. According to the regulations, a person violates the Act when he or she makes a contribution using money provided by another person without disclosing the source of the money to the recipient at the time the contribution is made. 11 C.F.R. § 110.4(b)(2)(i). This prohibition extends to persons who knowingly help or assist in making such contributions. *See* 11 C.F.R. § 110.4(b)(1)(iii).

According to the U.S. News Article, Laidlaw's internal audit found that some AMR employees who contributed to federal campaigns received bonuses from a "supplemental compensation plan." Although the employees denied that their donations were linked to AMR's compensation plan, the audit report drafted by counsel reportedly concluded that a prosecutor could infer from the facts that funds were used for illegal purposes. Compl. Ex. 1, at 2-3. The

U.S. News Article states that Laidlaw declined to inform the Commission of the report's findings, determining that the potential harm to the company outweighed the benefits of voluntary disclosure. If proven, these facts would constitute a violation of §§ 441b(a) and 441f.

The Act imposes increased civil and criminal penalties for violations of law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B), 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Comm'n v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). Proof that the defendant acted deliberately and with knowledge that the representation was false may establish a knowing and willful violation – indeed, a jury may infer that a defendant's acts were knowing and willful from its "elaborate scheme for disguising [] corporate political contributions." *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990) (imposing criminal liability under 18 U.S.C. § 1001 for willful concealment of material facts by savings and loan officers who funneled campaign contributions through straw donors).

The information provided in the complaint indicates that there is reason to believe the alleged conduct was knowing and willful. According to the U.S. News Article, the alleged violations were discovered when a Laidlaw Board member discovered that AMR had been reimbursing some employees who had made federal campaign contributions through bonus payments from a "supplemental compensation plan" – that is, payments disguised as something else. This alleged concealment would permit an inference that the violations were knowing and willful. *See id.* at 214-15.

Accordingly, there is reason to believe that Laidlaw, Laidlaw Transit and AMR knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.